IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.776 OF 1989

The State of Maharashtra .. Appellant
(Orig.Opponent)

Versus

1. Shri Ragho Bama Pavanekar
2. Shri Mahadeo Bama Pavanekar
3. Smt. Muktabai Bama Pavanekar
4. Shri Ramdas Bama Pavanekar
5. Smt. Indubai Balaram Bhopi
6. Sundarbai Dashrath Patil
   All residing at Khande-Panvel,
   through their Power of Attorney
   Shri Ambaji Gopal Mali .. Respondents
(Orig. Claimants)

Ms. Usha Kejariwal AGP for the Appellant
Mr. R.S. Pai alongwith Mr.S.G.Surana Advocate for the Respondents

ALONGWITH

FIRST APPEAL NO.1087 OF 1989

1. Shri Ragho Bama Pavanekar
2. Shri Mahadeo Bama Pavanekar
3. Smt. Muktabai Bama Pavanekar
4. Shri Ramdas Bama Pavanekar
5. Smt. Indubai Balaram Bhopi
6. Sundarbai Dashrath Patil
   All residing at Khande-Panvel,
   through their Power of Attorney
   Shri Ambaji Gopal Mali .. Appellants
(Orig.Claimants)

Versus

The Special Land Acquisition Officer .. Respondent
(Orig. Opponent)

Mr. R.S. Pai alongwith Mr.S.G.Surana Advocate for Appellants
Ms. Usha Kejariwal AGP for the Respondent

CORAM : S.R. SATHE,J.

DATED : 13/08/2007

ORAL JUDGEMENT :-

1. These two appeals arise out of the judgement and order passed by the Court of Civil Judge Senior Division Alibag-Raigad in Land Acquisition Reference No.270 of 1987 whereby the learned Civil Judge Senior Division fixed the market value of the land under reference at Rs.14/- per sq.meter and also awarded solatium and compensation as per Sections 23(2) and Section 23 (1)(a) of the Land Acquisition Act hereinafter referred to as the said Act and interest at the rate of 9% as per Section 28 of the said Act.

2. Appeal No.776 of 1989 is filed by the State contending that the learned Civil Judge Senior Division granted exorbitant rate to the land under reference. As against this, the claimants filed First Appeal No.1087 of 1989 contending that the rate granted by the learned Civil Judge Senior Division is unreasonable and inadequate and therefore claimed the price of the land under reference at the rate of Rs.30/- per sq.meter and modification in the interest awarded under section 28 of the said Act.

3. The brief facts giving rise to these appeals are as under :-

The Special Land Acquisition Officer (hereafter referred to as S.L.A.O.), Metro Centre No.12, Panvel, District : Raigad acquired claimant's lands bearing survey Nos.620/2, 620/4, 634/2, 633/5 admeasuring 1060, 1770, 5740 and 4550 sq.meters respectively situated at village Panvel, District Raigad for New Bombay project and notification under section 4 of the Land Acquisition Act came to be issued on 03/02/1970. The award was passed on 24/06/1986. The necessary publication in the gazette was made on 04/02/1970 the SLAO after taking into consideration all the relevant factors for determining the fair market price, awarded compensation at the rate of Rs.1.50/- per sq.meter. Possession of the land under reference was taken on 30/06/1986.

4. Being aggrieved by the awarded price the claimants filed reference No.270/87 under section 18 of the said Act and made a grievance that awarded price was grossly inadequate. According to claimants the lands under reference are situated

near Panvel Town. Bombay-Pune Highway is also near from the said lands. MIDC pipeline passes through the said lands and facilities such as electricity and water are available at Panvel Industrial Estate and Jawahar Industrial Estate which are at a short distance from the land under reference. Besides this, Johnson and Nicholson Factory is also near from the lands in question. The said lands are included within extended municipal limits of Panvel Municipality, Panve-Diva Railway line passes through the said area. Sion-Panvel highway is at a short distance from the said line. Besides this, lands under reference have potential of industrial development. Considering all these aspects the claimants initially requested to award market value at the rate of Rs.20/- per sq.meter.

5. The Opponent S.L.A.O. filed his Written Statement at Exh-6 and resisted the claim. He contended that lands under reference are not NA lands but the same are agricultural lands. The SLAO also contended that he fixed the market value of the lands under reference by taking into consideration level, situation, location of the land and comparable instances and the price

awarded to the lands situated in that locality in different awards. He, therefore, prayed that the reference be rejected.

6. The SLAO did not adduce any oral evidence. In order to prove their case, on behalf of claimants, they examined their power of attorney holder Prakash Deodhar at Exh-38 and Land Valuer Mr.J.N. Kulkarni at Exh-40. The Valuation Report was produced at Exh-41 and the map drawn by the Valuer was also produced at Exh-42 and 43.

7. After considering evidence adduced by the claimants and the relevant factors, the learned Civil Judge Senior Division found that the lands in question are situated within the extended municipal limits of Panvel. Having regard to the market price determined by the High Court in respect of the land in that locality, the learned Civil Judge Senior Division, came to the conclusion that the market value of the lands determined by the SLAO was grossly inadequate. So, on the basis of the price determined in other cases arising out of the same locality, the learned Civil Judge Senior Division fixed the

market price of the lands under reference at Rs.14/- per sq.meter and awarded compensation accordingly with additional component under the said Act as per section 23(1)(a), 23(2) and Section 28 of the said Act.

8. Being aggrieved by the above mentioned order the State of Maharashtra filed First appeal No.776 of 1989 and claimants filed 1087 of 1989 for the enhancement of the market value and the modification in the interest.

9. In this appeal before me, the learned AGP submitted that the land in question is not adjacent to the Bombay-Pune National Highway and is not NA land. No approach road is available to the said land. At the time of acquisition no electricity and water was available to the lands in question. He, therefore, submitted that the compensation granted by the learned Civil Judge Senior Division is unreasonable and as such, the appeal be allowed and the price determined by the Civil Judge Senior Division be reduced. As against this, the learned Advocate for the claimants submitted that lands in question are near from

Bombay-Pune Highway. Panvel S.T. Stand is also not far away from the said land. Moreover, lands are within the extended Panvel Municipal Limits. He also submitted that Division Bench of this Court (CORAM : F.I. REBELLO AND S.R. SATHE,JJ.) in FA-757 of 2003 has granted compensation in respect of different groups of lands situated within Panvel Municipal area and in the said case High Court has fixed market price after taking into consideration the distance of the land under reference from the National Highway. He, therefore, submitted that price determined by the Court in the said proceedings can be treated as base and accordingly, price of the lands under reference be fixed.

10. While considering the question as to whether the compensation awarded is correct or not and what should be the correct compensation one has to take into consideration the provisions of Section-23 and 24 of the said Act which lay down factors to be considered in determining compensation and factors which are required to be neglected in determining compensation, respectively. The most crucial question that

always falls for consideration in such case is what is the market value of the acquired land. It must be determined by reference to the price which a willing seller might reasonably accept from a willing purchaser. It is also well settled that such consideration must be confined to the date of notification under section 4(1) of the said Act. In a case reported in **AIR 1980 SUPREME COURT 1870 ADUSUMILLI GOPALKRISHNA V/S. SPECIAL DEPUTY COLLECTOR (LAND ACQUISITION)**. The Apex Court has observed :-

> *" On the Assessment of the compensation payable for land acquired, relevant factors must be taken into consideration, including nature of the land, its present use and its precise location in relation to adjoining land, the use to which the neighbouring land has been put and the impact of such use on the acquired lands and so on."*

11. It is also well settled that the recognized method for determining the correct market value is to find out comparable instances of sale. Even while doing so, only genuine instances have to be taken into account. Besides

this, it is necessary to see and consider the said instances of sale keeping in mind the proximity of time, proximity of situation and plus minus factors of the comparable instances of sale and the plus-minus factors of the land in question.

12. Keeping in mind the above mentioned points let's examined facts, circumstances and the evidence of the case in hand. It is not in dispute that the lands under reference are situated at village Panvel and the same are acquired for New Bombay Project. In order to point out the peculiarities of the lands under reference the claimants are mainly relying on the evidence of their power of attorney Deodhar at Exh-38 and Land Valuer Mr.J.N. Kulkarni at Exh-40. The Valuer has filed his report and map at Exh-41. From the evidence adduced on behalf of the claimants it is very clear that lands under reference are within the extended municipal limits of Panvel and the same are at a distance of about 1600 meters from Bombay-Pune Highway. Jawahar Industrial Estate is only at a distance of 800 meters from the lands in question. So also, Panvel Industrial Estate is at a distance of 200 meters. Admittedly, Johnson and

Nicholson Company is situated at the eastern side of the lands in question at 1680 meters. ESSO petrol pump is at a distance of 1720 meters. Water and electricity facilities are obviously available to Jawahar Industrial Estate as well as to Panvel Industrial Estate. Though, it is true that lands in question are agricultural lands, still one thing is certain that the said lands has NA potentiality for industrial, commercial and residential purposes. The municipal approach road is hardly at a distance of one furlong from the lands under reference. The valuer has also stated that the level of lands is plain. Thus, from all this evidence, it is very clear that the lands in question are in the vicinity of all important places and industrial establishments. Though, it is tried to be suggested that there is problem of water logging, no actual evidence is brought on record in that behalf by the SLAO.

13. From the evidence of the land valuer it is clear that he had taken into consideration the sale instances and in particular sale instances of ESSO petrol pump. Admittedly, the said transaction had taken place in the year 1967 and at that time,

land was purchased at the rate of 14.65 per sq. meter. Admittedly, the said transaction has been accepted by the Court in other land reference while determining the market price of the lands in that locality. The present lands are only at a distance of 1720 meters from ESSO petrol pump. So, taking into consideration all these peculiarities of the lands under reference valuer had determined the market price.

14. It is an admitted fact that this Court in several appeals arising out of land references in respect of the lands situated at Panvel determined the market price of the lands in that locality. In FA-754-86 Division Bench of this Court (CORAM : PURANIK AND MOHARIR, JJ.) on 25/02/1993 determined the market value of the lands situated within municipal limits of Panvel and Kamothe. After considering the vicinity of the respective lands to the National Highway No.4 and other infrastructural facilities available, the said Court awarded compensation by fixing the market price within the range of Rs.18 to 20 per sq.meter. The above mentioned judgement is upheld by the Apex Court. It obviously means that the

Apex Court did not find it necessary to interfere with the market value fixed by the Court in the said case. However, it appears that point with regard to 10% deduction for development was not considered at that time. Still the above mentioned Division Bench judgement has to be considered as guideline while determining the price of the lands in question.

15. Division Bench of this Court (CORAM : F.I.REBELLO AND S.R. SATHE,JJ.) in FA-757-2003 and other companion appeals fixed market price for each group of lands taking into consideration the distance between the land under reference and Bombay-Pune highway. As per the said judgement, for the lands situated within 750 meters from the said highway, market value is fixed at Rs.25/-per sq.meter after considering 10% deduction. For the lands situated between 750 to 1500 meters from the Highway the market price after deduction was fixed at Rs.23/- per sq.meter and for the lands situated at a distance above 1500 meters from the national highway, after deduction of 10% market price is fixed at Rs.21/- per sq.meter. As per the report of the valuer the lands under reference are at a

distance of about 1600 meters from Bombay-Pune highway. So, the same fall in the third category. However, taking into consideration other factors namely it is about 3680 meters from Panvel Railway Station and it is in the extended limits of Panvel municipality, I think that proper market value of the said land would be Rs.19/- per sq.meter. It is, therefore, necessary to enhance the market value of the land under reference from Rs.14 to Rs.19/- per sq.meter. Naturally, appeal filed by the State Government has to be dismissed.

16. It is clear from the order passed by the learned Civil Judge Senior Division that he has granted interest at the rate of Rs.9% as per section-28. In fact, it must be 9% for the first year and for further period it should be Rs.15%. Hence, I pass the following order:-

O R D E R

1. First Appeal No.776 of 1989 stands dismissed.

2. First Appeal no.1087 of 1989 is partly allowed.

3. The market price of the lands under reference fixed by the Court of CJSD, Alibag at Rs.14/- per sq.mt. is enhanced to Rs.19/- per sq.mt.

4. The Respondent to pay claimants market value of Claimant's lands admeasuring 13,120 sq.mts. at the rate of Rs.14/- per sq.mt.

5. The Respondent shall also pay the solatium 30% on the market value as provided under section 23(2) of the Land Acquisition Act.

6. The Respondent to pay to the Appellants compensation at the rate of 12% per annum as provided under section 23(1) (a) of the Land Acquisition Act.

7. The Respondent to pay to the Appellants claimants interest on the above mentioned amounts (market value of the land + Solatium + Compensation at the rate of 12% under section 23 (1)(a)) minus the amount already received by the claimants under protest (Rs.63,228.34), as per

Section 28 of the Land Acquisition Act at the rate of 9% p.a. for a period of one year and for the remaining period till the date of receipt of the amount at the rate of 15% p.a.

8. Under the circumstances of the case, parties to bear their own costs of both the appeals.

(S.R.SATHE,J.)